



Northern Ireland  
Assembly

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COMMITTEE FOR JUSTICE

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**OFFICIAL REPORT**  
(Hansard)

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**Justice Bill: Formal Clause-by-Clause  
Scrutiny**

20 January 2011

# NORTHERN IRELAND ASSEMBLY

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## COMMITTEE FOR JUSTICE

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### Justice Bill: Formal Clause-by-Clause Scrutiny

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20 January 2011

**Members present for all or part of the proceedings:**

Lord Morrow (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Lord Browne  
Mr Thomas Buchanan  
Mr Paul Givan  
Mr Alban Maginness  
Mr Conall McDevitt  
Ms Carál Ní Chuilín  
Mr John O'Dowd

**Witnesses:**

Mr Tom Haire                    )  
Mr Gareth Johnston        )        Department of Justice  
Ms Janice Smiley            )

**The Chairperson (Lord Morrow):**

We will now conduct our formal clause-by-clause consideration of Parts 1 and 2, which are about victims and witnesses and live links. This is the part you have all been waiting for. I remind members that, at our meeting on Thursday 13 January, the Committee informally considered the evidence received about clauses 1 to 19 of the Justice Bill, which covers Parts 1 and 2. At that time, we received further information and clarification where necessary from the departmental officials. It was agreed that we formally consider those clauses at today's meeting. A copy of the summary paper on clauses 1 to 19 and a copy of the Hansard report of the informal discussion have been included in your packs. The Department of Justice has provided the Committee with two letters this morning

relating to the live links clauses. Copies of those can be found in the tabled packs. I will refer to the letters when the Committee is discussing the relevant issues.

***Clause 1 (Offender levy imposed by court)***

**The Chairperson:**

We will start with Chapter 1 — the offender levy. Members should indicate whether they are content with the clauses as drafted or whether there are any issues that they wish to discuss about clauses 1 to 6 or paragraph 1 of schedule 5.

**Mr McCartney:**

I want to discuss the principle of the levy, which will have an impact on voting on the clauses. We have no problem with clauses 2 to 6 as they are written. However, we want to have a discussion about reparation, which I mentioned when Mr Johnston gave evidence. We are not sure whether the levy, as it is being presented, has the proper focus on reparation. We feel that people will basically see this as an addition to a fine rather than an offender accepting that a victim is involved and that that is part of the process. To strengthen the provision, we would like to see a person having the option to say whether or not they want to pay a levy or take part in some sort of community service, small and limited as they would be. That would, at least, give the offender the choice and, by doing so, there would be recognition that the levy or the community service is part of the reparation project.

**The Chairperson:**

Does anyone else wish to comment? The departmental officials are present, and they will comment if we ask them to. Mr McCartney, are you saying that, in your analysis, you feel that this is punishment twice over?

**Mr McCartney:**

I think that that becomes an issue later when it comes to custody. The double sanction will be one of the issues that we will be seeking legal advice on. One of the witnesses referred to that in written evidence. The idea of restorative measures or reparation is when an offender is to face up to the fact that they have done something wrong to a person, persons or the wider community.

We feel that offenders would see the levy, as it is framed, as an addition to a fine or as part of the inconvenience of going to prison. It would not help in the process of offenders accepting that what they did was wrong. If people are given the option of paying the levy or doing a small amount of community service, at least they would be part of a process of accepting that they did something

wrong and should be part of the reparation process.

**The Chairperson:**

Are you saying that they should make that decision?

**Mr McCartney:**

They should be given the choice as to whether they want to pay the levy or do community service.

**Mr Givan:**

I have a couple of queries about this. The first is about the administration of a community service element as opposed to the levy. The second is that the levy, as I understand it, is being brought in to generate a pot of money to support victims financially. However, Mr McCartney's suggestion would change the objective of bringing in the levy. The provision would apply to someone who was caught for speeding. When there is no victim per se, what would the community service element be for breaking a speed limit of 10 mph or 20 mph?

**Mr McCartney:**

When we get to the relevant clause, we will be saying that there should not be a levy for such offences.

**Mr Givan:**

OK. If someone is sentenced to imprisonment, it would be clear that the judge has decided that community service was not appropriate for that offence. Therefore, if someone is already in prison, substituting the levy with community service concerns me, because they would obviously be deemed to have committed a serious enough offence that resulted in them going to prison.

**Mr McCartney:**

There are two issues. First, the amount of money that the officials told us would be generated by the levy in a year would be between £220,000 and £300,000. Valuable as it is, it is not a large amount of money to be working with victims.

Secondly, a person who is given the choice of paying a £5 levy or perhaps standing in a supermarket on a Saturday afternoon packing bags to raise money for the hospice might opt for the £5 levy, but, at least in doing so, they are being asked to make a choice and would be part of the reparation process. If they had to go to prison, I am sure that the Prison Service could ask a prisoner,

while serving their two years, to go to a handicrafts class and furnish two handicrafts or do a painting or whatever, which could then be sold and used for victim support. That way, they would be part of the process of acceptance and part of the reparation process. That is our broad argument.

**The Chairperson:**

Would the victims have any say in this?

**Mr McCartney:**

They should have. Under this provision, as drafted, the victims have no say as to whether the levy is £5, £10 or £50. The victims are being acknowledged, but the reparation is going to be prescribed.

**The Chairperson:**

Who would you consult first: the victim or the offender?

**The Chairperson:**

Victims should be part of the wider the discussion, and we should be representing them. If I was a victim and I heard that someone got a £50 fine and a £5 levy, honestly, I would see that simply as a £55 fine. Perhaps it would be more cost-effective to say that it is a £55 fine, 10% of which will go to a victims' fund. That would save on all the administration.

If this is supposed to be part of the process of saying to people who have committed offences that they have to be part of the reparation and accept that they done something wrong, our opinion is that the provision is not strong enough. I am not arguing that, simply by being given a choice, people will be accepting that they have done something wrong. However, it is our view that we have to send a signal to those who we are legislating for that this is a process that is designed to do something. I am mindful of what the Attorney General said the other day about making laws that have no purpose.

**The Chairperson:**

We all agree with that. Maybe it is not relevant to the part of the Bill that we are discussing now, but we also all agree that part of the Bill is maybe making laws that already exist to deal with some offences. We have discussed that, and that will be another story for another day.

**Lord Browne:**

Giving them an alternative would increase the administration costs, which defeats the purpose of the money going to victims or the charities that support victims.

**Mr McCartney:**

The levy ranges from £5 to £50. Any community service element would be a one-off. It would not be a supervised scheme lasting for six months, for example. If someone has to pay a £5 levy, it would not take a lot to offer them some sort of equivalent, for example, two hours in a supermarket packing bags to raise money for the hospice.

**Lord Browne:**

I am not so sure.

**Mr McCartney:**

I understand that there would be an administration cost. I am not minimising that, Wallace.

**Mr O'Dowd:**

We have just had a discussion about community service and alternatives to imprisonment. It would not be a great stretch to include in the administration the element that we are talking about for the alternatives to a levy. It would simply mean directing an offender into a different section of the criminal justice system.

**Mr A Maginness:**

It is an interesting discussion, but I do not think what is being proposed is practical for such a small amount of money. It is an interesting idea, but it would not be practical in a live court situation; rather, it would complicate court proceedings. At the end of the day, I am not certain that it is worth all that.

**The Chairperson:**

You think it would bring no add-on value?

**Mr A Maginness:**

I do not think it would. I understand where Raymond is coming from, and it is an interesting idea. However, I really do not think that it is a practical proposition.

*Question put, That the Committee is content with the clause.*

*The Committee divided: Ayes 5; Noes 3.*

AYES

*Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.*

NOES

*Mr McCartney, Ms Ni Chuilín, Mr O'Dowd.*

*Question accordingly agreed to.*

*Clause 1 agreed to.*

***Clause 2 (Enforcement and treatment of offender levy imposed by court)***

**The Chairperson:**

Does anyone wish to comment on clause 2?

**Mr McCartney:**

We have no problem with how the clause is presented. However, obviously, we may seek to propose an amendment somewhere along the line. If we do not vote for clauses 2 to 6, our decision will be based on our original submission.

*Question put, That the Committee is content with the clause.*

*The Committee divided: Ayes 5; Noes 0.*

AYES

*Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.*

*Question accordingly agreed to.*

*Clause 2 agreed to.*

*Question put, That the Committee is content with the clause.*

*The Committee divided: Ayes 5; Noes 0.*

AYES

*Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.*

*Question accordingly agreed to.*

*Clause 3 agreed to.*

*Question put, That the Committee is content with the clause.*

*The Committee divided: Ayes 5; Noes 0.*

AYES

*Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt, Mr A Maginness.*

*Question accordingly agreed to.*

*Clause 4 agreed to.*

***Clause 5 (Offender levy on certain penalties)***

**Mr McCartney:**

This is around road traffic offences. We are opposed to the clause. We feel that it undermines the issue of reparations and victims. Clearly, it should be applied when someone has been hurt as a result of a road traffic accident. However, for other offences, we believe that the public may see the provision as being a revenue-raising power, rather than it being aimed at helping with victim support.

**Mr McDevitt:**

I understand what Mr McCartney is saying. However, I have a problem with the concept of victimless crime.

**Mr McCartney:**

I do not think that I said “victimless crime”.

**Mr McDevitt:**

I understand that. When trying to codify stuff in law, it is important for us to send a message that all crime impacts on society. If someone is done for speeding but did not kill someone or hit something, it does not mean that there was not the serious potential for them to have done a lot of damage. Drink-driving, possession of drugs or financial crimes, which is topical, are often described as not impacting on society. However, they do. If we are going to go down this road, we should do so for everything as listed in the penal code as opposed to doing so for some but not others. That is the weakness that I see in the argument.

**Mr O’Dowd:**

Maybe I am splitting hairs, but I am not trying to. Are road traffic offences such as speeding or illegal parking criminal offences? I do not think that they are classed as criminal offences. They may be offences; however, when someone applies for a job and is asked to list their criminal offences, I am not sure that they would include the fact that they received a £50 fine for breaking a red light. I accept that road traffic offences have the potential to cause serious harm and hurt, but, when that is the case, it is taken into account. If someone hurts someone else as a result of their actions on the

road, they certainly would not receive an on-the-spot fine; they would be in court to receive a sanction from the judge. So, there is a slight difference in this category. The fine imposed on someone for a road traffic offence is the punishment and the person's reparation to society and acknowledgment that they did something wrong. To add to that will be seen simply as further taxation. If someone breaks the 30 mph speed limit in a residential area, will residents' associations be able to apply to the fund for their activities? I do not think so. I accept that victims of road traffic offences may be able to apply to the victims' fund, but we are stretching it a bit far with this one.

**The Chairperson:**

I am going to ask the departmental officials to come to the table. Maybe you could give us some assistance. The question has been posed about whether speeding is a criminal offence. Does it make someone a criminal?

**Mr Gareth Johnston (Department of Justice):**

We are not talking about minor parking offences, which are not dealt under this regime. If someone refuses to pay a fine for a speeding ticket, they are then entered into the prosecution system for consideration. It is just that the speeding ticket is a way of dealing with that offence. So, we are still talking about offences when referring to speeding.

**Ms Janice Smiley (Department of Justice):**

Those are all offences in the criminal code. A bit like the fixed penalties in Part 6 of the Bill, this is an opportunity to deal with it outside the courtroom. If someone gets a speeding ticket, they can refuse to accept it and have their day court. In such cases, the decision will be made by the judge. Therefore, this is two ways of dealing with the same offence: it is an individual's choice as to whether accept the ticket.

**Mr McCartney:**

Would that not apply if it was just a fixed penalty for speeding?

**Mr Johnston:**

It would apply for a fixed penalty for speeding but not for a parking ticket.

**Ms Smiley:**

It would apply to what are called endorsable offences. The levy will apply to the sort of offence that would lead to someone having their driving licence endorsed in court. It will not apply to non-

endorsable offences such as parking —

**Mr McCartney:**

If someone takes the fixed penalty and gets three penalty points, are they liable to pay the levy?

**Ms Smiley:**

Yes.

**Mr Johnston:**

They would pay the £5 levy.

**Ms Smiley:**

Not, though, for minor traffic offences.

**Mr Givan:**

Correct me if I am wrong, but drivers can now go to classes rather than accept penalty points and a fine. If a driver chooses to go for one of those classes, would he still have to pay the levy?

**Ms Smiley:**

No, because he would be paying for the driver awareness course, which I think costs over £100. That is a one-off, just in the way that some of the fixed penalties are.

**Mr Johnston:**

In many ways, that is a diversionary alternative as opposed to a penalty.

**Lord Browne:**

Is that course in addition to paying a fine?

**Mr Johnston:**

No, it is instead of the fine. People can go on the course in certain circumstances. It is about diverting appropriate —

**Ms Smiley:**

I think it is for a first instance of speeding. People will be educated about the dangers of the type of driving that gave rise to the offence.

**Mr Johnston:**

Then, if they do it again —

**Mr Givan:**

But, that person will have committed an offence. In that sense, a levy —

**Mr Johnston:**

Yes, but I would look at that more with a view to the various diversionary functions. A young person may commit a minor offence but the police officer could use discretion as to whether the case gets taken forward or whether the young person should be brought home and spoken to with their parents present and receive an informal warning. In a sense, the driving course falls into that category.

**Ms Smiley:**

When it becomes a charge and someone goes to court, there has to be an outcome. This is an alternative.

**Mr Givan:**

When someone has to pay the levy, will the reason for it be made clear to them? For example, is it pointed out to them what victims were created because of their actions?

**Ms Smiley:**

Yes. That would be detailed on the ticket and explained by the officer. The person has to understand what they are paying. There will be two components: it will not be a £65 fine but a £60 fixed penalty fine and a £5 levy, for example.

**The Chairperson:**

If I am caught on camera, I am sent out a fine. What options do I have when that fine arrives with me?

**Ms Smiley:**

That would be a conditional offer of a fixed penalty. After an offence is caught by a speed camera, they have to identify who the driver was, so they would write out to the registered owner of the vehicle to ask whether that person was the driver on that occasion. The driver will then have the option to pay a fixed penalty with a levy or go to court in the normal way.

**The Chairperson:**

What about this driver awareness course? Do they get that option, too?

**Ms Smiley:**

That is a one-off opportunity for an individual who has been caught speeding for the first time but was not so far over the limit to be deemed dangerous enough to merit taking it forward in any other way. The person is given an opportunity to attend an education course on the dangers of speeding. We are not attaching a levy to that, as is the case with a number of other alternatives to prosecution.

**The Chairperson:**

The cameras are the best revenue-raising stream that is available, are they not?

**Ms Smiley:**

I am not sure whether that is the case or whether it is officers stopping people in the normal way. I can find that out and let the Committee know.

**Mr Givan:**

Will victims of car crime be able to access this fund?

**Ms Smiley:**

It is for victims across the board. The money for the communities will go through the community safety partnerships. A pot of money will be available, and the partnerships will identify priorities every year. I think that the fund will be open to all victims' groups, and allocations will be based on what the partnerships thought were the priorities for any particular year.

**Mr Givan:**

I would have thought that this levy on the motorist would be one of your key revenue generators.

**Ms Smiley:**

That is why we did not want to exclude the fact that victims of car crime could avail themselves of funds that may have been generated by a levy applied to car crimes.

**The Chairperson:**

Is there a tolerance level? If I am doing 32 mph in an area with a 30 mph speed limit, will I get a

ticket?

**Mr Johnston:**

There is the usual discretion. I am not sure what exactly that would be.

**The Chairperson:**

Does that discretion depend on how good a form the person on duty is in on the day?

**Mr Johnston:**

I understand that the police have guidelines. I am not sure of the detail, but I understand that there are guidelines to show what action will be taken if a driver is a certain level over the limit.

**Ms Smiley:**

There are certain levels for a fixed penalty, and a person caught using excessive speed would automatically have to go to court, so the discretion operates within a framework.

**The Chairperson:**

Would it be a 10% tolerance level?

**Ms Smiley:**

I am not sure what guidelines the police use.

**Mr Givan:**

I do not think that they tell you.

**Mr O'Dowd:**

I note that the Bar Council also raised concerns about this matter in its evidence session. In your response, you said that the levy would attach to the offences of speeding, using a mobile phone while driving and parking on pedestrian crossings etc. I am also concerned that the levy is the only levy that will be imposed outside the judicial system. It will be imposed on the side of a road by a police officer. As the Chairperson said, a lot can depend on what form the police officer is in on the day.

**Mr Johnston:**

The fixed penalty itself is being imposed outside the judicial system as well, and, if you do not agree with the fact that it is being imposed, there is always the option to say, "No, I want to go to court to

argue my case". In that circumstance, you are arguing the case against both the penalty and the imposition of the levy.

**Mr O'Dowd:**

With traffic offences in particular, a number of sanctions can be taken against you for one offence. If you speed, you can get a £60 fine and three, or perhaps more, penalty points on the spot. So, there is an additional sanction placed against a driver for committing an offence, and the insurance costs then increase, too. There is a multiplication of effects for that driver. Surely that has already made the driver think, "I should not have done that. I have just lost £60, I have three penalty points and my insurance has gone up."

Therefore, there is already a sanction against drivers that tells them that, in the eyes of the society, they have done wrong. On top of that, the Bill adds a levy that a driver has to pay to a fund for victims. I accept that there are no victimless crimes. However, if a driver has committed a driving offence that directly involves an individual victim, the court seeks reparation as well. Therefore, I do not think that this is the way forward for these sorts of offences.

**Mr Johnston:**

I am not sure that the arguments are very different here. As with a great many crimes that go to court where there is not necessarily an identifiable individual victim, the same considerations apply. We would hope that the penalty that is imposed by the court will make somebody think, "I should not have done that, and I will not do it again". The levy encourages offenders to see that what they have done has consequences for victims and the community, so there is an element of general reparation for those consequences.

**The Chairperson:**

It is a wee bit hard for us to get our heads around this. If I am doing 32 mph in a 30 mph zone, I can get booked. I hear what is being said; there is no victimless crime. There is always a victim somewhere. Yet, I could be doing 9 mph. I am talking about the levy. How is it applied in a case like that? The decision has been taken that I am now worthy of a ticket for driving at 32 mph.

**Mr Johnston:**

I do not think that you would generally get a ticket for doing 32 mph in a 30 mph zone.

**The Chairperson:**

Are you sure?

**Mr Johnston:**

In a sense, we are getting into a different debate here. We are getting into the debate about what you punish and what you deal with by discretion. All we are saying is that, if something is punished by a fixed penalty, fine or imprisonment, the levy attaches to that.

**Mr McCartney:**

What is the logic in applying this to someone over the age of 18? Can someone get a driving licence at 17?

**Mr Johnston:**

For someone younger than that, the normal disposal is a youth conference order, but we also felt that, for under-18s —

**Mr McCartney:**

For a road traffic offence?

**Mr Johnston:**

With under-18s, it is often the parent who ends up paying. We did not think that, for younger people, the connection would effectively be made between the individual offender and the victim.

**Ms Smiley:**

When someone aged under 18 goes to court and a financial order is imposed, there is a responsibility on the parent or guardian to discharge the order for them. So, in effect, if we were to apply a levy on those individuals, they would not be making any reparation; their parents would be doing so on their behalf. Therefore, it defeated the policy intent that the individual would feel that they had made some kind of reparation.

**Mr O'Dowd:**

Is that a legal or moral obligation on the parents?

**Ms Smiley:**

It is an obligation in law. There is a provision that states that, if an under-18 is fined or has another

financial penalty imposed on them, the parent has a legal responsibility to discharge the fine in the event that the individual does not have the money to do so.

*Question put, That the Committee is content with the clause.*

*The Committee divided: Ayes 5; Noes 3.*

AYES

*Lord Browne, Mr Buchanan, Mr Givan, Mr A Maginness, Mr McDevitt.*

NOES

*Mr McCartney, Ms Ní Chuilín, Mr O'Dowd*

*Question accordingly agreed to.*

*Clause 5 agreed to.*

***Clause 6 (Amount of the offender levy)***

**The Chairperson:**

Does anyone have any comments on this clause?

**Mr McCartney:**

A number of witnesses have told us that they feel that imposing a levy on someone who has already been given a custodial sentence creates a double sanction. Loss of liberty should be the only sanction.

**Mr Johnston:**

There are certainly circumstances in which a custodial penalty is already combined with other things. Janice will keep me right, but there may well be a compensation order or a fine as well as a sentence. As that is already provided for in law, we do not feel that we are making a departure in principle here. As we have said before, we have looked at this issue against the prison rules, and we have taken account of what the Human Rights Commission has said. We are looking at only a very small deduction each week from prisoner earnings. It is a reminder to a prisoner that what has been done has consequences.

*Question put, That the Committee is content with the clause.*

*The Committee divided: Ayes 4; Noes 0.*

AYES

*Lord Browne, Mr Buchanan, Mr Givan, Mr McDevitt.*

*Question accordingly agreed to.*

*Clause 6 agreed to.*

**The Chairperson:**

Before we move on to clauses 7 to 13, we have to deal with paragraph 1 of schedule 5, which is on the offender levy. Does anyone wish to comment on that? If not, we will put it formally to the Committee. Are members in favour of paragraph 1 of schedule 5?

*Members indicated assent.*

**The Chairperson:**

We will now deal with clauses 7 to 13. Can we have an early indication as to whether there are any issues around anything in those clauses?

**Mr O'Dowd:**

I have some issues with clause 12.

**The Chairperson:**

Are there issues with anything before clause 12? OK, I will put the question on those clauses.

*Clauses 7 to 11 agreed to.*

**Clause 12 (Examination of accused through intermediary)**

**The Chairperson:**

Mr O'Dowd, you wished to raise an issue.

**Mr O'Dowd:**

In its evidence session, the Law Society referred to the fact that best practice dictates that those suffering from mental health illness should be diverted away from the criminal justice system. It cites the Bradley report in England, which has received attention from even the House of Commons, where the Joint Committee on Human Rights has raised significant concerns about how similar legislation in England has drawn people with mental health issues into the criminal justice system instead of dealing with them outside it. Therefore, although, on the face of it, the clause seems to support people with mental health issues, it actually makes it easier for them to end up in the criminal justice system rather than be diverted away from it. Does the Department have any views on the Law Society's evidence to the Committee?

**Mr Johnston:**

I really do not think that that is the intention of the provisions. They are supportive provisions that have, in many ways, come about as a result of pronouncements of the European Court of Human Rights on situations involving the vulnerable accused and how they have been treated.

Therefore, the clause does not take away from either of two commitments. First, it does not take away from the commitment that we have given to review the law on unfitness to plead that may be engaged. We did that subsequent to the Donagh case, and that review is under way. Secondly, the clause does not change the commitment to look at the same ground that Lord Bradley looked at, which is how people with mental health issues are dealt with in the justice system and how they are diverted away from it. Lord Bradley was over for a seminar at which the various criminal justice agencies were represented, and that has kicked off the work of a new subgroup of the Criminal Justice Board that will deal with mental health and will look at what our strategy is. All of that is informed by the Criminal Justice Inspection report, 'Not a Marginal Issue', which was published in the past year.

Therefore, this matter is really about support and people's rights as espoused by the European Court of Human Rights. However, you are absolutely right; there are lots of people with mental health issues who should be diverted away from the system, and we are trying to pick up on that in different ways. We could certainly brief the Committee on those points at a later stage, if that would be helpful.

*Question, That the Committee is content with the clause, put and agreed to.*

*Clause 12 agreed to.*

*Clause 13 agreed to.*

***Clause 14 (Live links for patients detained in hospital)***

**The Chairperson:**

We move on to Part 2, which is on live links. This covers clauses 14 to 19. Members have been given some letters on this Part, which they might want to use as an aide-memoire.

**The Committee Clerk:**

In the first letter, which refers to clause 16, the Department outlines an amendment that it intends to bring forward. The second letter refers to clause 19 and provides further information on issues that the Committee discussed with officials last week.

**Ms Ní Chuilín:**

We have an issue with clause 14. We think that it should provide for a mental health advocate to be present for live links.

**The Chairperson:**

Have you made your point, or do you have something more to say?

**Ms Ní Chuilín:**

No, that is it.

**The Chairperson:**

Mr Johnston, since you are here, do you want to comment on that?

**Mr Johnston:**

We are moving into an area in which other colleagues are a bit more expert than I am.

**Ms Ní Chuilín:**

They are coming up behind you now.

**The Chairperson:**

They anticipated that we would need them.

**Mr Johnston:**

I beg the Committee's indulgence to allow Mr Haire to speak on this point.

**Mr Tom Haire (Department of Justice):**

I did not hear the question.

**Mr Johnston:**

The question was about clause 14: should an advocate be present with a person who is detained in hospital?

**Mr Haire:**

Arrangements are already in place, although not necessarily in statute, for the resident medical officer,

for example, to be with the patient. Indeed, the general powers being created in the previous clauses will apply to allow intermediaries to be available to the client.

**Ms Ní Chuilín:**

That may be customary practice at the moment, but we think that the issue should be included in statute. It does not seem to be any big shakes to you, but it is better looking at it than for it, particularly where mental health issues are concerned.

**The Chairperson:**

Would the Department die in the ditch about this one?

**Mr Johnston:**

We would need to look at it. We can have a think about it and consult colleagues. I am not thinking of just the practical issues. If we put in the Bill that we want something to happen automatically when, in other circumstances, it is at the discretion of the court, issues will arise around the interests of justice, and we would need to think about those. If the Committee wanted to pause its consideration of that clause, we could certainly come back to it.

**Ms Ní Chuilín:**

Fair enough.

**The Chairperson:**

We could park it until Tuesday. Would that give you enough time?

**Mr Haire:**

I know that, in the Bamford review of mental health, the position of advocates for mental health patients more generally is being addressed. It is also addressing how to deal with advocacy rights in mental health law more generally.

**Ms Ní Chuilín:**

The Bamford review has been going on for a lot longer than this mandate. I suspect that it will probably go on for a lot longer still. So, no disrespect, but this is an opportunity for us to make a difference.

**Mr Johnston:**

We are happy to look at that, Chairman.

**The Chairperson:**

I think that the Committee is happy to park clause 14. We can perhaps get consensus on it when we revisit it.

*Clause 14 referred for further consideration.*

*Clause 15 agreed to.*

***Clause 16 (Live links at preliminary hearings on appeals to the county court)***

**The Chairperson:**

We have had some indication that someone wants to comment on this clause.

**Mr O'Dowd:**

I have asked before about the Human Rights Commission's concern about the right of the appellant to give consent to a live link. Mr Haire told me before that it is implicit that the appellant gives written consent to a live link. However, I have gone through the legislation again, and I am still confused. I still think that the Human Rights Commission has a point. We should be proposing an amendment to clause 16 to give the appellant a right to give written consent to a live link.

**Mr Johnston:**

This is just about preliminary hearings for appeals to the County Court, not about the appeal hearing itself.

**Mr Haire:**

The point that I made last week was about the substantive hearing — the appeal hearing itself or, for example, the sentencing hearing. Various statutes require consent for the substantive appeal or sentencing hearings. When it comes to preliminary hearings such as the one outlined in clause 16 — indeed, this maps onto other law on preliminary hearings — the Human Rights Commission is right, there is not consent. There are representations by the appellant or defendant in terms of that live link hearing.

**Mr O'Dowd:**

So, we now accept that that is not in the clause. A preliminary hearing can last several days or, in some cases, weeks. Therefore, it is still our view that there should be an amendment to the clause to

give the appellants or defendants the same rights as they have in other cases where written consent is required.

**Mr Johnston:**

This is about preliminary hearings for appeals to the County Court. It is for appeals from the Magistrate's Courts. Generally speaking, those appeals are disposed of within quite prompt timescales, not the sort of timescales that you mentioned. A preliminary hearing could be on a very straightforward issue that needed to be dealt with in advance of the trial. Indeed, it is feasible that a hearing could last only a matter of minutes. This clause is trying to deal with the need, in those circumstances, to deliver someone from prison to the court and back again.

As Tom said, this provision sits with other provisions on preliminary hearings, where there is a right to make recommendations, but not a right to object. It comes down to the general approach of the European Court of Human Rights, which is to look at the whole criminal process from start to finish and to ask whether people have had the opportunity to tell their side of the story and to be heard during the entire process. That does not mean that someone needs to have that right to appear in person at every single stage. As we said about the provisions on the appeal hearing itself, if you want to be there in person, you will be there in person.

**The Chairperson:**

Is that clear?

**Mr O'Dowd:**

Well, I am not satisfied, but there is no point in rehearsing the argument.

**The Chairperson:**

But you understand it.

I draw members' attention to their information packs, as the Minister has proposed an amendment. Therefore, when members consider the clause, they are also being asked to consider the proposed amendment. Is everybody clear on that? The amendment is as follows:

“Clause 16, page 12, line 5, at end insert —

“(8A) If the court proceeds with the hearing under paragraph (8) it shall not remand the appellant in custody for a period exceeding 8 days commencing on the day following that on which it remands him.””

Perhaps the officials can take us through the amendment so that there is clarity at this stage.

**Mr Haire:**

The proposed amendment is to clause 16. Subsections (7) and (8) deal with what happens if the live link breaks down. The subsection that we are proposing is included in other law. It is a backstop provision that requires the court not to leave things unresolved. If, for example, the live link breaks down, under subsection (7), the court adjourns the hearing. Under subsection (8), it may then proceed without the appellant. However, we wanted to include an additional provision to say that, if the court does that, it must deal with the case not within the normal 28-day remand period, but more expeditiously than that. It is a gap that we did not have, and we did not think that we could slot this into existing law.

**The Chairperson:**

That sounds like common sense. Does anyone wish to comment? If not, I will put the question on clause 16, with the proposed amendments as before you and as outlined here in your presence.

**Mr O'Dowd:**

I just want to clarify whether the Committee would support amending clause 16 to take into account the Human Rights Commission's concerns?

**The Chairperson:**

The paper before us states that the commission:

“would prefer that clause 16 be amended to insert a requirement for the appellant's consent; it is otherwise content with the draft clauses.”

Mr O'Dowd, you are proposing that that should be done.

**Mr O'Dowd:**

Yes.

**The Chairperson:**

Is everyone clear on what is being proposed? I take it that everyone is clear on that. I will formally put the question to the Committee.

**Mr McDevitt:**

What are you putting to the Committee?

**Ms Ní Chuilín:**

The clause as amended by John's proposal.

**Mr Johnston:**

Chairman, if I might just mention that there would be considerable practical consequences in having to obtain consent for what are very regular and straightforward hearings. I just thought it right to flag that up.

**Mr O'Dowd:**

You are not trying to influence the vote in any way.

**Mr Johnston:**

Far be it from me to try to influence the Committee.

**Ms Ní Chuilín:**

You are doing a good job for someone who is not trying, no harm to you. *[Laughter.]*

**The Chairperson:**

Folks, just to be clear on this, the first vote will be on the amendment as proposed by the Department, and we will then vote on Mr O'Dowd's amendment. Is that clear?

OK. Are members in favour of clause 16, with the proposed amendment as outlined in the papers?

*Members indicated assent.*

**The Chairperson:**

We will now vote on the additional amendment as proposed by Mr O'Dowd. Are members in favour of the proposed amendment?

*Members indicated dissent.*

*Clause 17 agreed to.*

*Clause 18 agreed to.*

*Clause 19 (Live link direction for vulnerable accused)*

**The Chairperson:**

Someone had indicated that they wish to comment on this clause. I am not sure who it is. I think that the Department is going to bring us further information. Is that right?

Members will see from their papers that, in their response to clause 19, Include Youth advocated the need for a pilot study. The paper states:

“Include Youth supports the use of live links for accused under the age of 18 and aged over 18 where their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning, and where the use of live link would enable more effective participation. Include Youth recommends that this be piloted to assess effectiveness.”

Members, you have that in front of you. Do the officials wish to comment further on this issue?

**Mr Johnston:**

We believe that the provision that Include Youth is looking for is already available under the Criminal Evidence (Northern Ireland) Order 1999. This legislation is extending that provision. Include Youth mentioned a pilot, but the operational arrangements for live links have been available for some time. Essentially, the answer is that we believe that what Include Youth is asking for is already provided for in legislation for people under the age of 18 with vulnerabilities.

**Mr Haire:**

It is already operating.

**The Chairperson:**

If no one has anything to add, I will put the Question.

*Question, That the Committee is content with the clause, put and agreed to.*

*Clause 19 agreed to.*

**The Chairperson:**

We now turn to paragraph 2 of schedule 5, which deals with vulnerable and intimidated witnesses. Does anyone want to ask any questions on that before I put it formally to the meeting? Is the Committee in favour of paragraph 2 of schedule 5?

*Members indicated assent.*

**The Chairperson:**

Folks, thank you very much for your time and attention. I also thank the officials for their assistance.